



# STATE OF INDIANA

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November 26, 2012

Mr. Gary Otto  
DOC 905901  
501 W. Main St.  
Plainfield, Indiana 46168

*Re: Formal Complaint 12-FC-326; Alleged Violation of the Access to Public Records Act by the Plainfield STOP Facility*

Dear Mr. Otto:

This advisory opinion is in response to your formal complaint alleging the Plainfield STOP Facility ("Facility") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Mary Lowery, Grievance Coordinator, responded in writing on behalf of the Facility. Her response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you provide that on October 22, 2012, you submitted a written request for records to the Facility for the following:

- The cause number for GEO STOP Prisoner Gabriel Hatfield v. GEO STOP Lieutenant Kevin Davis for abuse of prisoner in the Hendricks County Court;
- The name of the attorney of record for Prisoner Hatfield;
- The name of "all" agencies, and names of each of their lead investigators who have investigated "any" physical or verbal abused on GEO STOP prisoners by "any" GEO STOP Officers since the opening of the GEO STOP Program in 2011 to October 22, 2012;
- The name of "all" agencies and names of each of their lead investigators who have investigated "any" physical or verbal abused on GEO STOP Staff by "any" GEO STOP Officers since the opening of the GEO STOP Program in 2011 to October 22, 2012; and
- The name of "all" prisoners, with I.D.O.C. number who have filed grievances for "any" physical or verbal abuses on them at the GEO STOP Program by "any" GEO STOP Officers since the opening of the GEO STOP Program in 2011 to October 22, 2012.

In response to your request, on October 29, 2012, Ms. Lowery responded in writing to your request and provided the following:

- The Cause number of the case in question can be found in the Law Library;
- The Facility did not have the attorney of record for Offender Hatfield;
- All investigation materials are confidential and not available for public access;
- All investigation materials are confidential and not available for public access;
- You are not authorized access to those that have filed grievances for “any” physical or verbal abuse.

Ms. Lowery further advised the basis for the denial was pursuant to 210 IAC 1-6-4(a) and (a)(2), which indicates an offender or person designated in writing can access your own records, and a person committed to or under the legal control of the Department may not act as an offenders agency. Thus, your request for information on other offenders is denied. Lastly, your request sought records that pertain to other offenders and are investigatory in nature. Accordingly, IC 5-14-3-4 states investigatory records are excepted from disclosure.

You believe that the Facility violated the APRA as the Law Library is not equipped to access the case record as the Facility has indicated. Further you maintain that the Facility would have the name of the attorney of record and that you did not ask for confidential records; rather you sought the name of any agency and its lead investigator which you believe is not a confidential record. Finally, you believe that the DOC Offender Locator would allow access to the names of all prisoners who have filed grievances on the Facility.

In response to your formal complaint, Ms. Lowery advised that the Facility received your request on October 23, 2012, to which it acknowledged its receipt in writing on October 23, 2012. The Facility’s final response to your request was provided in writing on October 29, 2012. In response to your request for a certain cause number and the attorney of record, Ms. Lowery provided that the case that you have requested is not related to the Facility and that you would be able to access the number via the Law Library. Your request for the names of the lead investigators for physical and verbal abuse was denied pursuant to I.C. § 5-14-3-4(b)(1) as it was investigatory in nature. Lastly, your request for the names of all offenders that have filed grievances was denied as such information would threaten the safety and security of the Facility.

#### ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” *See* I.C. § 5-14-3-1. The Facility is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Facility’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Again, section 9(b) requires that the agency respond within seven (7) days of the receipt of the request; not seven (7) days from when the request was mailed. A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). Here, the Facility acknowledged in writing the receipt of your request on the date the request was received. As such, it is my opinion that the Facility complied with section 9(b) of the APRA in response to your request.

“[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; *see also Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”). Further, an agency is not required to conduct research in response to a request for records. *See Opinions of the Public Access Counselor 03-FC-146; 05-FC-25; 12-INF-01*. In response to your request for a cause number and attorney of record for a certain court case, Ms. Lowery advised that the case is not related to the Facility, the Facility did not have information related to the case, and alternatively, you may access said information via the Law Library. As such, it is my opinion that the Facility did not violate the APRA by failing to produce a record that it did not maintain.

The APRA provides that a law enforcement agency retains the discretion to disclose its investigatory records. *See* I.C. § 5-14-3-4(b)(1). An investigatory record is defined as “information compiled in the course of the investigation of a crime.” *See* I.C. § 5-14-3-2(h). The investigatory records exception does not apply only to records of ongoing or current investigations; rather, it applies regardless of whether a crime was charged or even committed. The exception applies to all records compiled during the course of the investigation, even after an investigation has been completed. The investigatory records exception affords law enforcement agencies broad discretion in withholding such records. *See Opinion of the Public Access Counselor 09-FC-157*. “Generally, a police report or incident report is an investigatory record and as such may be excepted from disclosure pursuant to I.C. § 5-14-3-4(b)(1).” *Id.* I would also note that the Facility would not be required to create a list or record in response to a request. To the extent that the Department denied your request for investigatory records, it is my opinion that the Department did not violate the APRA and alternatively, the Facility would not have been required to create a list that was responsive to your request.

It is my understanding based on your mailing address that you are confined in a penal institution. As such, you are an "offender" for the purposes of the APRA. *See* I.C. § 5-14-3-2(i). The APRA contains an exception to disclosure to an "offender" for a record that contains information that would concern or affect the security of a jail or correctional facility:

Records requested by an offender that:

(A) contain personal information relating to:

(i) a correctional officer (as defined in IC 5-10-10-1.5);

(ii) a law enforcement officer (as defined in IC 35-31.5-2-185).

(iii) a judge (as defined in IC 33-38-12-3);

(iv) the victim of a crime; or

(iii) a family member of a correctional officer, law enforcement officer, judge, or the victim of a crime;  
or

(B) concern or could affect the security of a jail or correctional facility. I.C. § 5-14-3-4(b)(23).

The Facility denied your request for a list of all prisoners who have filed grievances for any physical or verbal abuse at the GEO STOP Program or by any GEO STOP officers, as the release of the record would affect the security and safety of the Facility. The information, if provided, would cause other offenders at the Facility to be in fear of reprisal. In addition, again I would note that the Facility would not be required to create any such list in response to a request. As such, it is my opinion that the Facility did not violate the APRA by denying your request for such a list pursuant to I.C. § 5-14-3-4(b)(23).

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Facility did not violate the APRA.

Best regards,



Joseph B. Hoage  
Public Access Counselor

cc: Mary Lowery